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10/628,060	07/25/2003	Sarah Maillefer	2652	4150

7590 09/14/2010  
STRIKER, STRIKER & STENBY  
103 East Neck Road  
Huntington, NY 11743

EXAMINER
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VAKILI, ZOHREH

ART UNIT	PAPER NUMBER
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1614

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### **Claims 25-32 are presented for examination.**

Applicant's Amendment filed June 22, 2010 has been received and entered into the present application. Claims 25-32 are pending and are herein examined on the merits.

Applicant's arguments, filed June 22, 2010 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

### ***Double Patenting (Maintained)***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 25-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of US Patent No. 6582679 B2.

An obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim is not patentably distinct from the reference claims because the examined claim is either anticipated by, or would have been obvious over, the reference claims.

In this case, the reference claims recite a hair wax product comprises from 3 to 20 percent by weight of an emulsifier. Wherein said emulsifier is selected from the group consisting of addition products of 2 to 30 mol ethylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; addition products of 1 to 5 mol propylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 1 to 5 mol of propylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 1 to 5 mol propylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; fatty acid mono- and diesters having 12 to 22 carbon atoms of addition products of 1 to 30 mol ethylene oxide with glycerol; addition products of 5 to 60 mol of ethylene oxide with castor oil; monoesters, diesters and

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triesters of phosphoric acid and addition products of 2 to 30 mol of ethylene oxide with fatty alcohols having 8 to 22 carbon atoms; or mixtures thereof.

The components of the compositions are identical and so is its use. Such subject matter of the present claims directly conflicts with the subject matter of the reference claims and is not considered to be patentably distinct.

Thus, claims 25-32 are not considered to be patentably distinct over claims 1-19 of US Patent No. 6582679 B2, and are properly rejected under the judicially created doctrine of obviousness-type double patenting as being obvious and unpatentable variants.

### **Response to Argument**

The Terminal Disclaimer is not approved because the assignment indicates ownership belongs to WELLA AKTIENGESLLSCHAFT.

### ***Conclusion***

No claims of the present application are allowed.

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to Zohreh Vakili, telephone number 571-272-3099. The examiner can normally be reached from 8:30 a.m. to 5:00 p.m., Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner

September 8, 2010

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/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614